

Amy P. Lally (SBN 198555)
alally@sidley.com
SIDLEY AUSTIN LLP
1999 Avenue of the Stars, 17th Floor
Los Angeles, CA 90067
Telephone: (310) 595-9662
Facsimile: (310) 595-9501

Eric B. Schwartz (SBN 266554)
eschwartz@sidley.com
Anna Tutundjian (SBN 309969)
atutundjian@sidley.com
Marissa X. Hernandez (SBN 341449)
marissa.hernandez@sidley.com
SIDLEY AUSTIN LLP
555 West Fifth Street, Suite 4000
Los Angeles, California 90013
Telephone: (213) 896-6000
Facsimile: (213) 896-6600

*Attorneys for Defendant
FASHION NOVA, INC.*

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

JUAN ALCAZAR, individually
and on behalf of all others similarly
situated,

Plaintiff,

v.

FASHION NOVA, INC., a
California Corporation, and DOES 1 to 10,
inclusive,

Defendants.

) Case No. 4:20-cv-01434-JST

) Assigned to Hon. Jon S. Tigar

) **DECLARATION OF ERIC B.
SCHWARTZ IN SUPPORT OF
DEFENDANT FASHION NOVA, INC.'S
JOINT DISCOVERY LETTER BRIEF
[DKT. NO. 137]**

) Trial Date: January 8, 2024

) Complaint Filed: February 26, 2020

DECLARATION OF ERIC B. SCHWARTZ

I, Eric B. Schwartz, declare the following:

1. I am an attorney, duly licensed to practice law in the State of California, and am admitted before this Court. I am a partner with the law firm of Sidley Austin LLP (“Sidley”), counsel of record for Defendant Fashion Nova Inc. (“Fashion Nova”) in this action. I submit this declaration in support of Fashion Nova’s Joint Discovery Letter Brief [Dkt. 137], and to respond to Plaintiff’s Declaration of Shahin Rezvani re: Fashion Nova’s Non-Compliance with Court’s Standing Order [Dkt. 138]. I have personal knowledge of the matters set forth in this declaration and, if called upon, I could and would competently testify thereto.

2. Attached as **Exhibit A** is a true and correct copy of an email exchange between counsel for Fashion Nova, including myself, and counsel for Plaintiff. As reflected in Exhibit A, Fashion Nova requested a meet and confer on November 13, 2023. Counsel for Plaintiff refused to meet until Fashion Nova outlined the subjects of the meet and confer in writing, so Fashion Nova did so on November 14, 2023, as reflected in Exhibit A.

3. On that same date, November 14, 2023, at 4:56 pm, Plaintiff responded and raised an additional subject – its request to claw back documents that its expert had produced and been questioned about. Fashion Nova promptly requested a meet and confer to take place the next day. A true and correct copy of that email exchange is attached hereto as **Exhibit B**.

4. On November 15, 2023 at 3:00 pm, the parties met and conferred about the three subjects raised by Fashion Nova in Exhibit A, and the additional claw back request in Exhibit B. The parties were unable to resolve their differences at that time, so Fashion Nova drafted its portion of a joint letter brief and transmitted it to Plaintiff at 10:42 pm that same day. A true and correct copy of that transmittal email, without the attachment, is attached hereto as **Exhibit C**. Fashion Nova asked Plaintiff to provide its portion by 12:00 pm on Friday November 17, 2023.

5. On November 17, 2023, at 12:34 pm, Fashion Nova inquired about the status of Plaintiff’s insert, and asked for a copy by the extended time of 1:00 pm. *See* Exhibit A. Plaintiff refused to provide a copy by that time, noting that Fashion Nova had provided revised versions after the original transmittal, and demanding that the filing be made under seal. However, as noted by

1 Fashion Nova, those revisions were to: (a) *remove* an issue from consideration; and (b) to note that
2 the deposition of Plaintiff's expert had moved from October 25, 2023 to November 7, 2023 due to
3 his illness. *See* Exhibit A. Fashion Nova responded that Plaintiff's portion of the letter brief must be
4 provided by "3 pm sharp." *See* Exhibit A.

5 6. Plaintiff finally provided its portion of the joint letter at 3:23 pm – i.e. about 1.5 hours
6 before it was due. *See* Exhibit A.

7 7. Fashion Nova worked as quickly as it could to incorporate Plaintiff's portion of the
8 brief into the filing that was already started, despite Plaintiff's violation of the hard cutoff set by
9 Fashion Nova. Due to Plaintiff's delay and insistence on an under seal filing, Fashion Nova filed its
10 motion to seal at 5:22 pm (instead of before 5:00 pm as planned), with the Joint Discovery Letter
11 attached [ECF 136], and filed the public version at 5:59 pm [ECF 137]. Needless to say, had
12 Plaintiff timely provided its portion, Fashion Nova could have filed before 5:00 pm.

13 8. At 6:25 pm on November 17, 2023, Plaintiff's counsel accused Fashion Nova's
14 counsel of "sharp practice" because the letter brief was somehow changed. Unclear what the
15 supposed change was, I responded five minutes later: "I don't know what you're talking about. It's
16 identical. Let me know the issue and we can resolve on Monday." That email exchange is attached
17 hereto as **Exhibit D**.

18 9. On November 20, 2023 at 10:43 am, I wrote to Plaintiff's counsel: "Following up on
19 this. As I said, the brief should be identical (other than converting to PDF and applying redactions,
20 of course), so I'm not sure what the disconnect is. Is there something you feel we need to correct for
21 the court? Happy to discuss." *See* Exhibit D. Plaintiff's counsel did not respond to either inquiry
22 and instead filed its affidavit complaining that Fashion Nova somehow failed to follow the standing
23 order.

24 10. After reviewing the affidavit filed by Plaintiff's counsel, I had a redline run of the
25 version of the Joint Discovery Letter Brief that was filed with the Court [Dkt 137], and the version
26 transmitted by counsel for Plaintiff 1.5 hours before the filing deadline. There was not a single
27 change to either argument section, and only minor non-substantive changes, as reflected in the
28 excerpted images below:

Re: *Alcazar v. Fashion Nova, Inc.*, Case No. 4:20-cv-01434-JST
 Joint Letter Brief re: Fashion Nova, Inc.'s Motion to Compel Expert Discovery
~~Dispute~~

Dear Judge Tigar:

Pursuant to Paragraph H of this Court's Standing Order, "~~Discovery Matters~~," Fashion Nova, Inc. ("Fashion Nova") and Plaintiff Juan Alcazar ("Plaintiff"), and after meeting and conferring, respectfully submit this joint letter brief ~~describing each disputed issue regarding~~ Fashion Nova's motion to compel three categories of information and documents from Plaintiff's designated experts, as follows:

JOINT LETTER BRIEF RE DISCOVERY

Case No. 4:20-cv-01434-JST

SIDLEY AUSTIN LLP

/s/ Eric B. Schwartz
Eric B. Schwartz

Amy P. Lally (SBN 198555)
 alally@sidley.com
 SIDLEY AUSTIN LLP
 1999 Avenue of the Stars, 17th Floor
 Los Angeles, CA 90067
 Telephone: (310) 595-9662
 Facsimile: (310) 595-9501

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Telephone: (213) 896-6000
Facsimile: (213) 896-6600

[WILSHIRE LAW FIRM, PLC SIGNATURE BLOCK]

/s/ Thiago M. Coelho
Thiago M. Coelho

Thiago M. Coelho, SBN 324715
 thiago@wilshirelawfirm.com
 Shahin Rezvani, SBN 199614
 srezvani@wilshirelawfirm.com
 Jennifer M. Leinbach, SBN 281404
 jleinbach@wilshirelawfirm.com
 Jesenia A. Martinez, SBN 316969
 jesenia.martinez@wilshirelawfirm.com
 Jesse S. Chen, SBN 336294
 jchen@wilshirelawfirm.com
WILSHIRE LAW FIRM, PLC
 3055 Wilshire Blvd., 12th Floor
 Los Angeles, California 90010
 Telephone: (213) 381-9988
 Facsimile: (213) 381-9989

*Attorneys for Plaintiff and
 the Nationwide and California Classes*

11. The rest of the joint brief, containing all of the material substance, did not have any changes at all.

12. Fashion Nova is willing to provide the full redline if helpful for the Court, but due to Plaintiff's confidentiality designations, such document would need to be lodged under seal, subject to the Court's ruling on whether Plaintiff's designations are meritorious and support sealing.

I hereby declare under penalty of perjury of the laws of the United States that the foregoing statements are true and correct.

Executed on this 20th day of November 2023, in Los Angeles, California.

/s/ Eric B. Schwartz

Eric B. Schwartz